TEXAS DEPARTMENT OF MOTOR VEHICLES BOARD MEETING

Thursday, December 13, 2012

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Victor Vandergriff, Chair
Laura Ryan, Vice Chair
Robert "Barney" Barnwell, III
Blake Ingram
Cheryl E. Johnson
Raymond Palacios
Victor Rodriguez
Marvin Rush
Johnny Walker

I N D E X

AGEN:	DA ITI	<u>EM</u>	PAGE
1.	A. B.	TO ORDER Roll Call and Establishment of Quorum Public Comment (no commenters) Comments and Announcements from Chairman and Board Members	6 6 6
2.	B. C.	Consideration of Enforcement Agreed Orders under Occupations Code, Chapter 2301 Consideration of Enforcement Notice of Violation Citation Agreed Orders under Occupations Code, Chapter 2301 Consideration of Enforcement Dismissal Orders under Occupations Code, Chapter 2301 Consideration of Settlement and Dismissal Orders under Occupations Code, Chapter 2301.204 (Warranty Performance Complaints)	7
3.		LUTIONS for INDIVIDUAL CONSIDERATION - ESTED CASES Consideration of Enforcement Motions for Disposition Based on Default under Occupations Code, Chapter 2301 (see attached itemized list B)	8
	В.	Warranty Performance Proposals for Decision under Occupations Code, Chapter 2301 • 12-0149 CAF - Hilco Electric Cooperative Inc. v. Ford Motor Company ALJ recommends dismissal	8
4.	RESOI RULES A.	Adoption of Rules under Title 43 Texas Administrative Code, Chapter 215, Motor Vehicle Distribution Subchapter D, Franchised Dealers, Manufacturers, Distributors and Converters §215.105, Notification of License Application; Protest Requirements; and §215.107, Hearing	33

ON THE RECORD REPORTING (512) 450-0342

		 New Under Subchapter D, Franchised 	
		Dealers, Manufacturers, Distributors	
		and Converters	
		<pre>\$215.116, Lease or Sublease Listing; \$215.117, Market Value Property</pre>	
		Appraisal; §215.118, Determination of Affected	
		County for Dealership Relocation; and	
		§215.119, Standing to Protest	
		• Withdrawal of Subchapter I, Practice and	
		Procedure for Hearings Conducted by the	
		State Office of Administrative Hearings	•
		§215.307, Notice of Hearing	
	В.	Proposal of Rules under Title 43,	37
		Texas Administrative Code Chapter 217, Vehicle Titles and	
		Registration	
		• Subchapter B, Motor Vehicle	
		Registration §217.34, Registration Fee Credit:	
		Title Reinstatement - Repeal	
5.	BRIE	FINGS AND ACTION ITEMS	
	A.	Election of Vice Chair	39
	В.	Board Committee Updates	11
		Motor Vehicle License Advisory Committee Possible recommendations for the	41
		promulgation of rules regarding licensing,	
		criminal conviction, and fitness	
	C.	TxDMV Automation Projects	44
	D.	Request Approval for Procurement of Infrastructure Related to Transition	52
		Projects	
		1. WAN/LAN Separation	
		2. Headquarters Communication	
		Infrastructure 3. Directory Migration	
		4. Infrastructure Separation and	
		Consolidation	
		5. TxIRP Infrastructure Replacement	
	E.	Approval for Specialty Plate Designs • Houston Rockets	59
6.	REPO		
	A.	Monthly Financial Report	62

	В.	Executive Director Reports			
		1.	FY 2013 TxDMV and TxDOT Memoran	dum 68	
		2	of Understanding (MOU) SB 197 Update	68	
		۷.	DD 197 Opaace	00	
7.	EXECU	JTIVE	SESSION	72	
			ion 551.071		
	В.	Sect	ion 551.074		
8.	ACTON	ITE	MS FROM EXECUTIVE SESSION (none)	73	
9.	ADJOU	IDNME	NT	73	

2.3

PROCEEDINGS

MR. VANDERGRIFF: Good morning. My name is

2 Victor Va

Victor Vandergriff and I'm pleased to welcome you here today to the meeting of the Board of the Department of

5 Motor Vehicles.

I'm now calling the meeting for December 13, 2012 of the Board of the Texas Department of Motor

Vehicles to order, and I want to note for the record that public notice of this meeting, containing all items on the agenda, was filed with the Office of Secretary of State on -- I do not have that official date here. Can anybody tell me that date? It was filed on December 5, 2012.

Thank you.

Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode.

And if you wish to address the board during today's meeting, please complete a speaker's card at the registration table. To comment on an agenda item, please complete a yellow card and identify the agenda item. If it is not an agenda item, we'll take your comments during the public comment portion of the meeting.

And now I'd like to have a roll call, please, of the board members. Vice Chair Ryan?

MS. RYAN: Present.

1	MR. VANDERGRIFF: Board Member Barnwell is
2	absent.
3	Board Member Ingram?
4	MR. INGRAM: Present.
5	MR. VANDERGRIFF: Board Member Johnson?
6	MS. JOHNSON: Present.
7	MR. VANDERGRIFF: Board Member Palacios?
8	MR. PALACIOS: Present.
9	MR. VANDERGRIFF: Board Member Rodriguez?
10	MR. RODRIGUEZ: Present.
11	MR. VANDERGRIFF: Board Member Walker?
12	MR. WALKER: Present.
13	MR. VANDERGRIFF: And let the record reflect
14	that I, Victor Vandergriff, am here as well, and we do
15	have a quorum.
16	With that, I'm going to the public comment
17	portion. I don't have any cards here. Is there anyone in
18	the audience who wishes to address the board on a matter?
19	(No response.)
20	MR. VANDERGRIFF: I do not see any.
21	The next item is any comments or announcements
22	coming from the board. I do want to note that we have
23	been joined by our general counsel today, officially.
24	Margaret Wilson has joined us. I know we had an
25	introduction of her at the last meeting, but welcome.

Thank you very much. We will, I'm sure, very shortly baptize you with questions and comment here. Do you have any comments that you'd like to make?

MS. WILSON: Not at this moment.

2.3

Mr. Harbeson.

MR. VANDERGRIFF: Okay. Thank you very much. With that, we can move into our consent agenda.

MR. HARBESON: Good morning. My name is Bill Harbeson. I'm the director of the Enforcement Division for the department.

on the consent agenda before you today are 73 enforcement agreed orders where the respondent and the staff have reached an agreement to settle the contested case matter. There are 17 notice of violation or citation cases. These are for minor violations where tickets were issued in the field and the respondent has elected to settle the case by forwarding the civil penalty to the agency. There are eight enforcement motions for dismissals. These are cases where as staff proceeded they believed it was in the best interest to dismiss the case rather than actually proceeding with the case. And there are eight Lemon Law settlements where because of the settlement staff is recommending dismissal.

We are today asking that these matters be approved by the board.

MR. RODRIGUEZ: So moved, Mr. Chairman. 1 MR. VANDERGRIFF: We have a motion from Board 2 3 Member Rodriguez. Do we have a second? MS. RYAN: Second. 4 MR. VANDERGRIFF: Second from Vice Chair Ryan. 5 6 All those in favor please raise your right hand in support of the motion. 7 (A show of hands.) 8 MR. VANDERGRIFF: The motion carries 9 unanimously of the members present. And for the record, 10 Board Member Rush, as well as Board Member Barnwell are 11 12 absent today. 13 MR. HARBESON: May I proceed? MR. VANDERGRIFF: Please. 14 15 MR. HARBESON: On the contested cases there are 16 five enforcement motions for disposition. These are cases where staff has filed a notice for hearing, we've proceed 17 to SOAH, and there was a default by the Respondent. 18 19 case is now before you for approval of the final orders, and staff is asking that you approve those five final 20 orders. 21 MR. VANDERGRIFF: I'll entertain a motion. 22 MR. RODRIGUEZ: So moved, Mr. Chair. 2.3 24 MR. VANDERGRIFF: I have a motion from Board Member Rodriguez. Can I get a second? 25

ON THE RECORD REPORTING (512) 450-0342

MS. JOHNSON: Second.

2.3

MR. VANDERGRIFF: Second from Board Member

Johns. All those in favor please raise your right hand in support of the motion.

(A show of hands.)

MR. VANDERGRIFF: The motion carries unanimously of the board members present.

Thank you, Mr. Harbeson.

MR. HARBESON: Thank you.

MR. VANDERGRIFF: Mr. Gladney, I believe you're up on the warranty performance proposals.

MR. GLADNEY: For the record, Mark Gladney.

Today's case is Hilco Electric Coop v. Ford

Motor Company, Cause No. 12-0149. At this time there are
no parties present to comment on this case.

In this case, the complaining party purchased a 2008 Ford F550 truck on April 17 of 2009. The motor vehicle warranty was for four years, 100 miles. The complainant experienced engine-related problems first on December 18 of 2009 and returned the vehicle for servicing five additional times for engine-related problems between January 6 of 2010 and June 7 of 2011. The engine was replaced by Ford on July 6 of 2011. Four additional service trips for the replacement engine occurred between October 27 of '11 and June 26 of '12.

The complainant filed a complaint with the DMV on April 5 of 2012. There was a hearing at SOAH on August 24 of 2012. The respondent declined repair due to the engine warranty expiring and Ford was unwilling to pay an engine teardown to determine the problem with the engine. Respondent's experts surmised that there was water in the diesel fuel that caused the problem and that was not covered by the warranty, however, an engine teardown would have been likely needed to confirm the theory.

2.3

SOAH recommended dismissal due to possible contamination of fuel and lack of evidence of the defects. Staff recommends reversal and repair of the vehicle under 2001.058(e)(1) with the order that you currently have in your briefing book.

This case is a little bit different, I certainly had to read the PFD several times before I kind of understood it, and in anticipation of some questions that you may have, as I said, this should be reversed under 2001.058(e)(1), and the reason is that from past cases of this type under 2301.204, when you have an ongoing problem, and this case it was certainly an ongoing engine problem, it predated the expiration of the original warranty, and continuing engine-related issues occurred even after replacement of the first engine and most of the problems centered around the high pressure pump, but the

continuing problems were also related to loss of engine power which is what the complainant complained about with the original engine.

2.3

The law requires that when you buy a motor vehicle that it perform within warranty, that is, if you buy a motor vehicle, you expect it to run properly. You get it in, turn it on, it runs, takes you here, to and from. In the case, the vehicle rarely did. I basically ran for about the first 24,000 miles and then that's when a cascade of problems started to occur and the complainant was required to take the vehicle in no less than nine additional times. Most past cases and practice have allowed for warranty repair as long as the defect is reported during the warranty period, and that would be under 2301.603.

Staff at this time recommends reversal under 2001.058(e)(1) and that repairs be granted to the complainant.

MS. WOODS WILEY:

MS. JOHNSON: So moved.

MR. WALKER: Second.

MR. VANDERGRIFF: We have a motion and a second. Any discussion?

MR. RODRIGUEZ: Yes, sir. You're asking us to do something other than what the ALJ has recommended.

MR. GLADNEY: Yes. 1 2 MR. RODRIGUEZ: And there are three reasons by 3 which we can do that. Right? MR. GLADNEY: Right. 4 MR. RODRIGUEZ: May I ask general counsel to 5 6 cite those for us, please? 7 MS. WILSON: Those three reasons under Section 2001.058 of the Administrative Procedure Act are: 8 number one, that the administrative law judge did not properly 9 10 apply or interpret applicable law, agency rules, written policies provided; or that a prior administrative decision 11 upon which the administrative law judge relied is 12 13 incorrect or should be changed; or that a technical error in a finding of fact should be changed. Those are the 14 15 three reasons. 16 MR. RODRIGUEZ: Which of those bases are you 17 suggesting? MR. GLADNEY: We are relying upon subsection 18 19 (e) (1), that the administrative law judge did not properly apply the applicable law or agency rules or written 20 policies. 21 22 MR. RODRIGUEZ: Now, I read your memo on this and I didn't see any of that cited. So I'm not 2.3 24 disagreeing with you, I'm just saying that I would ask you

to cite the legal basis by which the recommendation is

25

based on is what I'm asking.

MR. GLADNEY: I think if you look at the proposed order in the briefing book --

MR. RODRIGUEZ: I saw the order. I'm talking about your executive summary in the memo.

MR. GLADNEY: Oh, the executive summary.

MR. RODRIGUEZ: Yes.

MR. GLADNEY: Yes, I understand.

MR. RODRIGUEZ: No other questions, Mr.

Chairman.

2.3

MR. PALACIOS: I'd like to follow up too.

Specifically, I have trouble with this, as well. The ALJ ruled a certain way and you're looking to overturn it based on -- I forgot the statute or rule that you mentioned -- but what specific item did the ALJ overlook in this vehicle?

MR. GLADNEY: The problem that staff had with the ALJ's analysis in this case is it seemed like the ALJ centered on possible contamination of the fuel in the fuel injection pump. Now, with the first engine they had found some water in the fuel pump and basically Ford had surmised that the water was in the diesel fuel that they were using as a source was the problem associated with this. The only problem is at the time of the hearing what they asserted was an affirmative defense, and an

affirmative defense basically admits the existence of a problem but it's seeking excuse for a legally acceptable reasons.

2.3

If you prove an affirmative defense, you also must prove the affirmative defense, and the only way it could have been proved if it even existed would have been probably through an engine teardown and examination of the fuel pump, or getting a fuel sample at that particular time, which would have been approximately six months prior to the ALJ's hearing, to prove that there was an existence of water in the diesel fuel. None of that was present in this particular case.

MR. PALACIOS: Are you saying that there was no proof that there was water in the fuel?

MR. GLADNEY: At the time of the hearing there was no proof offered by Ford that water was in the diesel fuel because they never bothered to take a fuel sample.

MR. PALACIOS: So they just made it up?

MR. GLADNEY: Well, I can't say if they made it up, but whenever you assert an affirmative defense -- and an affirmative defense would be to say insanity, duress, self-defense -- if you assert that type of affirmative defense, the party that's asserting it has not only the burden to go forward with the affirmative defense, but they also have the burden to prove that affirmative

defense, and from the ALJ's own PFD, there does not appear to be any evidence that was offered by Ford to show that there was water in the fuel sample.

2.3

You can plead an affirmative defense all the livelong day, but if you can't prove it, it doesn't exist legally.

MR. PALACIOS: I disagree somewhat with your assertion that you have to tear the engine apart to prove that there's an issue with it.

MR. GLADNEY: Well, I'm not a technician or anything.

MR. PALACIOS: Exactly.

MR. GLADNEY: But I did consult with our case advisors, who are technicians, on this a particular case, just asking that very question, and with regard to the high pressure fuel pump, I've been informed that it could fail for any number of reasons over and above whether or not there was water in the fuel pump, but their assertions were that a fuel sample would have been the best way to confirm that particular assumption. And that's what this is, it's basically an assumption made by Ford that the judge decided to go with without any type of backing whatsoever.

MR. PALACIOS: Okay. So this was only conjecture. I guess there's no one from Ford here.

MR. GLADNEY: No, no one from Ford here. This would be conjecture on the part of Ford, and if you're going to plead an affirmative defense, you darn well better prove it.

MR. RODRIGUEZ: Mr. Gladney, given those questions, I had another question come up. You're asking us to reverse an order. What's the limit of the repair that you're suggesting?

MR. GLADNEY: Pardon?

2.3

MR. RODRIGUEZ: What's the limit, or is it just an open-ended, fix it all costs?

MR. GLADNEY: Well, the statute does require that the vehicle be put in the status to work in accordance with the warranty, so the proposed order that you have, I believe, in this case requires at the very least the repair of the fuel pump.

MR. RODRIGUEZ: I understand all that. The problem I have with this is that you're making a recommendation here and in your submittal to us, at least the executive summary, as far as I can tell, does not anchor that reasoning in our statutory provisions and I don't find enough reasoning here for us to do not only a reversal but a remand to fix the vehicle. So I just wanted to let you k now that's my problem with this.

MR. GLADNEY: Well, where you find the citation

of that particular statute would be in the final order. I understand it's not in the executive summary.

MR. RODRIGUEZ: I understand that's in the order. I don't find the justification in the executive summary for that.

MS. RYAN: I have a question. The engine was replaced. Right?

MR. GLADNEY: Yes.

2.3

MS. RYAN: At 77,000 miles. Often with a replacement like that, the replacement part has a limited warranty. How does that come into play? How long was that warranty and what agreement was made?

MR. GLADNEY: Well, there was a dearth of evidence with regard to what warranty, if any, existed on the replacement engine, however, the replacement engine came in during the period of the existing warranty, so the way that we've interpreted before in the past is that, again, if there is an issue that predates the end of the original warranty, then 204 action and relief would be still available with the replacement engine, and in this particular case it was replaced at approximately 74,000 miles, the warranty was 100,000 miles.

MR. WALKER: Would you say that in English this time? How far does the warranty go at the end of the 70,000 miles?

MR. GLADNEY: Well, the original warranty on the motor vehicle was 100,000.

2.3

MR. WALKER: Okay. At 90,000 miles -- let's just make up a hypothetical -- at 90,000 miles I put a new engine in the truck, Ford does. Does that extend the 100,000 mile warranty, or at the end of 10,000 miles, if that's two months later, does that warranty go away also?

MR. GLADNEY: Well, in this particular case there was no evidence as to whether or not the replacement engine had a warranty on it, it's not part of the record evidence.

MR. WALKER: That's where the failure is occurring, is it not, in the second engine?

MR. GLADNEY: The second engine is having somewhat similar problems, and mainly it's loss of engine power, and then I think eventually the engine threw a rod, and then basically the vehicle is just sitting still and it has been for like the last six months. But what we've had here since 24,000 miles is, as I said, a cascade of problems with the vehicle's engine. So the problems existed during the time of the original warranty, the problems still existed after the replacement engine was placed in there, so in past practice in other cases that we've done, it's basically the problem still existed at the time before the expiration of the original warranty,

so the problem would have had to have been corrected.

2.3

And I do admit there is a little bit of an issue since we don't have evidence as to whether or not there was a warranty on the replacement engine. Let's just say that there was, hypothetically, a two-year warranty on that engine, you may be able to tack that on to the end, and if after, say, one day after the two years runs out, or something of that nature, and then it has problems, then 204 relief would not necessarily be available to complainant at that point.

MR. RODRIGUEZ: If I may, you didn't give us a clear answer on his question. Am I correct?

MR. WALKER: You're right. I still don't have a clear answer.

MR. RODRIGUEZ: And I'm not going to belabor this any further. I don't think any of this is really clear and there's a lot of surmising, I think, on your part on this, and I have a lot of concerns about the recommendation, and the recommendation being not only reverse but also order the repair. That's not my problem with this and I just want to make sure. The second part is the more problematic part for me because it's really to sit up here and say fix it, and someone in business is going to say why am I going to have to do this.

MR. VANDERGRIFF: Mr. Ingram.

MR. INGRAM: Mr. Gladney, so to continue the thought process just one step further, if we were to approve the proposed order and order that it be repaired, Ford repairs it, 10,000 miles from now, 20,000 miles from now, another year from now the motor blows again, where does it stop?

2.3

MR. GLADNEY: Okay. Let's say, using a hypothetical here, in this particular case it was four years/100,000 miles, if there were problems that occurred, obviously the warranty is going to end either at four years or 100,000 miles, so once the warranty expires, then that is it. Now, under 2301.603, if a problem exists and it's reported to the manufacturer during the warranty period, and even after the warranty expires, if that problem still exists, then he would be entitled to 204 relief. Obviously, if the problem didn't exist after the repair, any relief under 204 would expire with the expiration of the warranty.

MR. PALACIOS: I didn't get a clear answer. I think what Board Member Ingram's concern is that we just leave this wide open. I mean, when does it stop? And that's my concern. I don't think 2301.63 gives carte blanche time frame to repairs. I mean, at some point there has to be a stopping point, and what I'm hearing now if there was an issue under the original warranty, then it

extends almost indefinitely.

2.3

MR. GLADNEY: Well, it only extended simply because the same problem existed during the period of time that the original warranty was enforced. That's the only problem.

MR. PALACIOS: But to what extent? I mean, eventually the components are going to break down, so does that mean if it had an issue at 10,000 miles, therefore, it should it extend until the owner stops driving the vehicle? I mean, it doesn't make any sense to me. I think the manufacturers' warranties are in place for a reason. The components of many manufacturers are covered afterwards, but I don't think we have the purview of indefinitely extending a warranty based on a prior repair that may have not been completed.

MR. GLADNEY: And I agree with you, I'm not saying that this would go on forever, but based upon what 2301.204 initially is saying, if you're going to buy a motor vehicle, the motor vehicle should work within its performance specifications during the warranty period.

Now, you couple that with 2301.603, if there is a problem during the warranty period and that problem continues to exist after the warranty expires, then, yes, they could be entitled to 204 relief. So it's not necessarily ad infinitum. I mean, eventually the warranty is what's

going to be the dividing line here, it's going to be what's cut off.

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

2.3

24

25

MS. RYAN: So, Mr. Gladney, based on -
MR. VANDERGRIFF: I'm sorry. Ms. Johnson was

up first. I apologize.

MS. RYAN: Oh, I'm sorry.

MS. JOHNSON: I'm one of the few people, I think, on this board that actually drives cars that tend to age long enough that you need to put a new motor in I've probably embarrassed the board a little bit with the age of my vehicles, but I had a new motor put in a Ford vehicle, Ford didn't put it in, the person who put it in did give me an extended warranty, and I have certain performance issues that I have to follow in order for that warranty to hold. And so I perfectly understand, and gentlemen, this might can go on and on, if the consumer is doing the right thing and it's a mechanical failure, then that's not the consumer's problem and the manufacturer has a responsibility. If they put a new motor in, came with a warranty, and the consumer is absolutely entitled to whatever expectations that that engine is going to continue to work and work properly.

MR. GLADNEY: And I certainly agree with you. The issue here is if Ford is maintaining that there may have been a problem with fuel contamination, certainly

under Board Member Johnson's example, if they had have shown that, then that would have been an intervening cause and 204 relief would not be available to the complainant at that particular time because it wasn't the fault of the manufacturer at all.

2.3

MS. RYAN: So if we followed the logic that at 100,000 miles the original warranty expired, however, the engine was replaced at 77,000 miles so the failure of the second engine falls under the first warranty, to the question of how long does this last, do we have the ability to ask that there is a best and final effort to fix one last time because this repair would be outside of the 100,000 miles, and that then satisfies the this cannot continue to go on and on and on type of situation.

MR. GLADNEY: That could be done. I think this whole situation could have been solved; had there been evidence of the warranty on the replacement engine that could have solved a few things here. But certainly, that could be done, but once again, we still have the same problem that exists here is that we have little or no evidence of Ford's affirmative defense, so we have a vehicle that has an ongoing problem from 24,000 miles up until over 100,000 miles, has the same problem, they replaced the engine and that engine still has problems. But there's no indication as to what the cause for the

problems were, were they Ford's or was it a problem caused by the complainant. In the absence of that affirmative defense and sufficient evidence to show that Ford was not responsible, we have what we have as far as the evidence is concerned and what we have is a non-functioning vehicle from 24,000 miles up to the present.

2.3

MS. RYAN: But Ford has replaced, this will be the second engine, if there's additional repairs it could possibly be the third and I think they'll have to do that because of the thrown rods. Right? Multiple water pumps, multiple other repaired breakdowns. So I think there's been some effort on that side to try to repair it, too, without knowing whether maintenance is getting done. We're not sure on either side, really. Nobody knows what the problem is, obviously.

MR. GLADNEY: Now, one possible remedy -- and this could be stretching things a little bit -- one possible remedy might be a remand for further evidence on Ford's position and maybe some additional evidence from the complainant on this case. That might be one possible remedy.

MS. JOHNSON: But is that even possible now if the care has been sitting for six months?

MR. GLADNEY: That's what I'm concerned about.

MS. JOHNSON: It might have condensation and

water in it, anyway.

2.3

MR. GLADNEY: That's what I'm concerned about that you're not going to get a good fuel sample.

MR. WALKER: Mark, the last paragraph says that when they put the engine in here, they flushed the fuel tank out to make sure that there was no water in the fuel tank. So it's kind of weird to me that you replaced an engine and now you have the same problems with the next engine, but you have a fleet of 64 vehicles they have and they don't have that problem in any of the other vehicles. It's almost like this vehicle was being sabotaged for some reason or something another. Two bad engines, same problems.

MR. GLADNEY: And I thought that was a little strange too, and the expert from Ford had suggested that the engines in the other vehicles were older and could possibly stand up to fuel contamination than the newer version of the engine that they had originally put into the F550 and the replacement engine.

MR. WALKER: So the inference might be that the fuel contamination is not in the tank on the actual truck but that it might be in the storage facility tank that they're getting fuel from at their facility. Maybe they're buying fuel from -- maybe they have an onsite fuel tank that has water in it that was getting into multiple

trucks.

2.3

MR. GLADNEY: That's a possibility. Another possibility might be a different design with the newer engine that may make it more susceptible to that. But, you know, again we're starting to go down that rabbit trail that Ford is claiming that there was contamination in the fuel sample in the replacement engine, we don't have that evidence right now.

MR. INGRAM: And there's so much of this that's now getting into conjecture. I mean, even in the ALJ, the comment was that the fuel tank was possibly the basis to infer that the loss of power was caused by contaminated fuel. You know, it doesn't even sound like it was really a fact even at that point.

MR. RODRIGUEZ: Call the question, Mr. Chairman. I'm sorry. Go ahead.

MR. WALKER: Can I ask our legal? Margaret, I know you're new, I hate to put you on the spot here so early, but can we not send this back to SOAH and let the parties bring forth better evidence at the SOAH administrative law judge level?

MS. WILSON: It's possible that you could do that, but I think that what we have here is more of a case of meeting legal standards and whether or not there's been a prima facie case made in the beginning, and if so, then

it falls upon the manufacturer to come forward and make its affirmative defense, and if it does not do that, then that's what Mr. Gladney is saying, then the prima facie case made by the complainant stands. If they've put forth enough evidence to satisfy the statutory requirements, then they win, unless Ford produces enough evidence to day that's not it.

2.3

MR. INGRAM: So really, Ford has just seriously made a mistake in the way they handled this.

MS. WILSON: It appears that way to me. I can't make that judgment, but that's probably better for Mr. Gladney to answer. On a legal basis, that's how it appears to me, but I was not there.

MR. GLADNEY: If I were to surmise, I would say they may have made an error. If they're going to rely upon an affirmative defense of contaminated fuel, then a fuel sample taken from the vehicle could have been easily obtained by Ford prior to the hearing.

MR. VANDERGRIFF: I think the question was can we send this case back and request further evidence be prepared on this, or are we within our purview of asking SOAH to do that. Can we ask them to do that? We don't have any procedural authority over SOAH.

MR. GLADNEY: Well, we've remanded cases back to SOAH before.

MR. VANDERGRIFF: I understand. But can we do 1 that on this? 2 MR. GLADNEY: I believe that we could remand 3 this back. Again, we could have potential evidentiary 4 issues. 5 6 MR. INGRAM: I don't fully understand why in this case, in this particular case only, we would send it 7 8 back. To me, it feels like we're saying to the complainant: Congratulations, you win, but not really 9 10 because we're going to send it back. It feels like to me, I mean, Ford made a mistake. If they had done a different 11 type of response, if they had checked the fuel, we 12 13 wouldn't be sitting here with this. And I think it's unfair to the consumer in that case sending it back. 14 15 MR. GLADNEY: If I may make one last point. 16 When a party pleads an affirmative defense, they are 17 admitting the existence of liability, but at the same time they're saying we're liable but we have a legally 18 19 acceptable excuse as to why we should not be penalized or sanctioned in that regard. 20 MR. INGRAM: Thank you. That was so much 21 better than my version of that. 22 MR. GLADNEY: Well, occasionally I have a lucid 2.3 24 moment. 25 (General laughter.)

ON THE RECORD REPORTING (512) 450-0342

MR. VANDERGRIFF: We do have a call for the 1 2 question, but go ahead. MR. WALKER: Let me ask you a question because 3 you're a car dealer. 4 MR. VANDERGRIFF: I'm not a car dealer on this 5 6 board. 7 MR. WALKER: But you were in your past life. 8 Ford, to me, is a big manufacturer company in Dearborn, Michigan -- I guess they're still there -- but 9 10 if you were to bring a car back to Mac Haik Ford and say I have an issue with it, and the Mac Haik Ford guy says, 11 hey, our warranty is out, you're beyond the 100,000 miles, 12 13 is that Ford speaking or is that the dealer speaking? MR. PALACIOS: That's Ford speaking. 14 15 MR. WALKER: So even though Ford may not even, 16 from a manufacturing level, even know that this exists, 17 he's responsible for it because his dealer denied the warranty after a certain point. 18 19 MR. PALACIOS: Well, he's following up on Ford's guidelines and procedures. Ultimately, it's the 20 manufacturer that will honor the warranty and the dealer 21 will perform the services. 22 MR. WALKER: So if the car were to come into 2.3 24 the dealership beyond this point, who has to honor that: the dealer, or does Ford manufacturing have to go to the 25

dealer and say, hey, you need to honor this? 1 MS. RYAN: All warranty is paid by the 2 3 manufacturer through the dealer. MR. WALKER: I understand that. 4 MS. RYAN: They would have to go to Ford. 5 6 MR. WALKER: So did the manufacturer ever have any representation at the SOAH hearing or at any level on 7 this case? 8 MR. GLADNEY: Yes. 9 10 MR. WALKER: Okay. MR. GLADNEY: In these types of cases, Ford 11 will have, or any manufacturer will have either a 12 13 manufacturer's rep who will represent them, or they may hire outside counsel. 14 15 MR. WALKER: Let me ask a question here. 16 Johnson made a motion that I seconded. Could I get her to read her motion so I understand what it is, and if there 17 is a limit and end? 18 19 MR. VANDERGRIFF: You certainly can. I think her motion was merely to accept the recommendation from 20 the department to reverse this finding. I'm not sure it 21 had any more detail than that. 22 MS. JOHNSON: No. And I've marked the 2.3 24 recommendation. I can certainly tell you what I intended 25 is that we accept the order, that the proposal for

decision be rejection, that finding of fact number nine be substituted that the complainant proved the vehicle suffered an engine and is currently inoperable, and that the word "not" is removed from conclusion of law number four. There's more here about 30 days of receipt but I think that probably if we cover that the proposal for decision be rejected and that finding of fact nine and conclusion of law four be corrected, that is probably sufficient.

MR. WALKER: But where does that take us in reference to Mr. Palacios's concern, and I'm with him on this, that we can't expect Ford to forever put engines in trucks.

MS. JOHNSON: But there's a limitation on that engine.

MR. WALKER: What is that limitation? We have asked that question and haven't gotten that answer.

MS. JOHNSON: That's up to either Ford or somebody else to tell us, we don't know what their contract is. I know that when I had a new motor put in, that I was given very specific terms that I had to follow, and I'm following them to the T because of who the person was who replaced my motor. So you've got to look back at that warranty that came with this new engine, and whatever that says, that's the terms.

MR. GLADNEY: That's correct. And under the 1 proposed order, what the proposed order is suggesting is 2 3 that at a minimum the respondent replace the long block engine, including the fuel injection system and 4 turbocharger with commercially available authorized Ford 5 6 replacement parts. Now, assuming that's done, there 7 should be a warranty associated with the installation of 8 that long block engine and components. MR. INGRAM: If I'm a smart consumer, I'm going 9 10 to sell this truck as soon as it's fixed.

MR. GLADNEY: We've had similar cases like this and we have advised complainants that once you get it fixed, please sell it.

MR. VANDERGRIFF: Make sure we're asking a question here.

11

12

13

14

15

16

17

18

19

20

21

22

2.3

24

25

MS. JOHNSON: Ford has a responsibility, in my opinion, to stand behind its product, that's why it has the reputation that it does in the industry today, and so if they want to say it's not their fault, they have the burden of proving it's not their fault, and they have not done that sufficiently here.

MR. GLADNEY: Correct.

MR. VANDERGRIFF: We have a call for the question. Mr. Walker, are you withdrawing your second or are you still seconding that motion?

1	MR. WALKER: No. I'm going to leave my second.
2	MR. VANDERGRIFF: Okay. So we have a motion by
3	Ms. Johnson, we have a second by Mr. Walker. All those in
4	favor of the motion please raise your right hand in
5	support of the motion.
6	(A show of hands: Ingram, Johnson, Vandergriff
7	and Walker.)
8	MR. VANDERGRIFF: All those opposed.
9	(A show of hands: Palacios, Rodriguez and
10	Ryan.)
11	MR. VANDERGRIFF: The motion passes four to
12	three. Those in favor were Board Members Johnson, Walker,
13	Ingram and Vandergriff, and those against were Board
14	Members Rodriguez, Palacios and Ryan, for the record.
15	MR. GLADNEY: That's all I have. Thank you.
16	MR. VANDERGRIFF: We're now on item number 4 on
17	the agenda. I believe we have Mr. Harbeson oh,
18	Michelle, you're up on this. Okay.
19	MS. LINGO: Good morning. I'm Michelle Lingo,
20	staff attorney in the Motor Vehicle Division under the
21	direction of Interim Division Director Bill Harbeson.
22	Agenda item 4.A is presented for the board's
23	adoption of amendments and new rules implementing Senate
24	Bill 529. On September 13 of this year, the board

approved publication in the Texas Register of proposed

25

amendments and new rules.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

2.3

24

25

The department received comments from the Texas Association of Automobile Dealers. TADA questioned the interplay between two statutory provisions. First, Occupations Code 2301.263 provides that each license is subject to applicable statutory and rule provisions in effect at the time the license is issued and those become effective during the term of the license. At the same time, the non-amendatory provisions of Senate Bill 529, Sections 16 and 17, provide that the change of law made by Senate Bill 529 applies only to an agreement entered into or renewed under Occupations Code Chapter 2301 on and after September 1, 2011. Simultaneously, an agreement entered into or renewed before September 1, 2011 is governed by the law in effect on the date the agreement was entered into or renewed and that former law continues in effect for that purpose.

This board established the Senate Bill 529

Advisory Committee to further the cooperative efforts of motor vehicle dealers and manufacturers. The advisory committee has successfully resolved a number of issues relating to the implementation of this bill. However, industry stakeholders, including those involved in the negotiations of Senate Bill 529, do not agree on certain elements.

Therefore, staff recommends that the board adopt amendments proposed to Sections 215.105 and 215.107 and proposed new Sections 215.116 through 215.119 without change. But staff also recommends that the board withdraw amendments that were proposed to 215.307. There are three primary reasons that staff makes this particular recommendation.

2.3

First, the board may move forward to adopt those provisions where consensus was reached among the stakeholders. Second, this action will afford the stakeholders an opportunity to address matters during this upcoming legislative session, and the issues may also be more fully vetted through contested case proceedings whereby each party advocates a position and consideration is given to applicable law, relevant facts and legal argument for a particular case. Finally, in future rulemaking this board may still address this issue and any other implementation issue. For example, the board might address the issue of good will which is an example of another issue where industry stakeholders didn't come to consensus.

If the board adopts the amendments and new rules today, staff anticipates publication of the adoption in the *Texas Register* on or about December 28 for an effective date of January 3, 2012. And as you may recall,

1	that was part of our mission was to finalize the
2	rulemaking that we could accomplish before the next
3	session.
4	I'd be happy to answer any questions you may
5	have.
6	MR. WALKER: I so move that we accept the
7	recommendation to post the cleanup of the bills.
8	MR. VANDERGRIFF: Do we have a second?
9	MS. JOHNSON: Is this a post or an adoption?
10	MR. WALKER: It's to post.
11	MS. LINGO: It's to post them for adoption.
12	MR. WALKER: But you have to post them first.
13	MS. JOHNSON: They were already posted.
14	MS. LINGO: The comments have already come in.
15	TADA presented comments, and my recommendation is that we
16	adopt but not adopt changes
17	MS. JOHNSON: It's terminology at the state
18	level.
19	MS. LINGO: Let me clarify. When I say post,
20	we're going to post the adoption to the Texas Register.
21	You go twice to the <i>Texas Register</i> : first you post to
22	solicit comments, second you post the board's decision,
23	whatever that might be.
24	MR. WALKER: Okay. We're adopting.

MR. VANDERGRIFF: Yes, we're adopting. The

25

1	motion is to adopt.
2	MR. WALKER: I make a motion that we adopt the
3	recommended changes to the rules.
4	MR. PALACIOS: Second.
5	MR. VANDERGRIFF: We have a second from Board
6	Member Palacios. Any discussion?
7	(No response.)
8	MR. VANDERGRIFF: All those in favor please
9	raise your right hand in support of the motion.
10	(A show of hands.)
11	MR. VANDERGRIFF: All those opposed.
12	(No response.)
13	MR. VANDERGRIFF: The motion carries
14	unanimously.
15	Michelle, I know it's been a year's worth of
16	effort, so thank you. And also thank you to Board Member
17	Ingram and certainly Board Members Ryan and Palacios for
18	their work on this, as well as the industry.
19	MS. LINGO: Thank you.
20	MR. VANDERGRIFF: Mr. Elliston.
21	MR. ELLISTON: Good morning, Mr. Chairman and
22	members. My name is Randy Elliston. I'm the director of
23	the Vehicle Titles and Registration Division for the
24	agency.

ON THE RECORD REPORTING (512) 450-0342

25

You have before you today a request to post for

public comment the proposed repeal of Texas Administrative Code Title 43, Section 217.34. This section was originally adopted effective January 1 of 1976 and relates to registration fee credits. Currently the department, in compliance with Transportation Code 502.194, issues registration credit vouchers for vehicles that have been destroyed to the extent that they cannot afterwards be operated on a public highway as long as the registration fee remaining exceeds \$15.

2.3

This rule that we're asking you to repeal currently states there is no instance in which a vehicle may be retitled to which a fee credit voucher has been issued, but then contradicts itself and says that it may be allowed to be retitled upon repayment of the credit fee. This rule is in conflict with the statute and may be confusing to the public and is not necessary to comply with the statute. We currently do issue these. So we recommend the repeal of this rule be posted for public comment. This is basically a cleanup of some of our rule statutes. And this is just posting for comment.

MR. VANDERGRIFF: Is there any questions of Mr. Elliston?

MR. RODRIGUEZ: So moved, Mr. Chairman

MR. VANDERGRIFF: We have a motion for approval

by Board Member Rodriguez. Do we have a second?

MS. RYAN: Second. 1 MR. VANDERGRIFF: Second by Vice Chair Ryan. 2 All those in favor of posting for publication. 3 (A show of hands.) 4 MR. VANDERGRIFF: The motion carries 5 6 unanimously. 7 The next item on the agenda, we're into the briefings and action items section, is the election of 8 vice chair. In accordance with board policy we passed 9 10 last year, each December we will hold an annual election for the vice chair, and I would be pleased to open it to 11 the members to submit a nomination for vice chair. 12 13 MR. WALKER: I have a question before we get there. It was my understanding -- and I may be totally 14 15 wrong but if I'm wrong, there's several other board 16 members on the board also that are going to be wrong too because we've all talked about this in passing -- we 17 thought that this was going to be a two-year term. 18 19 going to be annually? Because Laura has been here one year. Is that not correct? 20 MR. VANDERGRIFF: That's correct. 21 22 MR. WALKER: Did we decide that it's going to be annually or that it's biannually? 2.3 24 MS. RYAN: Annually.

ON THE RECORD REPORTING (512) 450-0342

MR. RODRIGUEZ: We can make it two years today,

25

1	by the way.
2	MR. WALKER: Do what?
3	MR. RODRIGUEZ: We can make it a two-year term
4	today.
5	MR. INGRAM: I do remember annually now, I
6	vaguely remember that now.
7	MR. WALKER: And Cheryl served two years the
8	first time. Right?
9	MR. VANDERGRIFF: That's correct. But the
10	suggestion and I think actually Ms. Johnson made that
11	suggestion is that for consistency we do this so you
12	start at the beginning of a year in this term and the
13	board did take action that it was an annual term at that
14	point. Originally it was a two-year term but we had to
15	change that when it ended.
16	But you can make a motion to make it a two-year
17	term, as Board Member Rodriguez has stated.
18	MR. INGRAM: I move that we reelect Member Ryan
19	as vice chair.
20	MS. JOHNSON: Second.
21	MR. VANDERGRIFF: We have a motion and a
22	second. Any other nominations? I don't see any. I
23	propose that the board reelect Ms. Ryan as vice chair by
24	acclamation, so a little different for us. Say aye.

(A show of hands.)

25

MS. RYAN: One year. Correct?

(General talking and laughter.)

2.3

MR. VANDERGRIFF: With that, we're into the board committee updates and we have the Motor Vehicle License Advisory Committee that Mr. Ingram chaired. Ms. Lingo is back up.

MS. LINGO: Good morning. I'm Michelle Lingo with the Motor Vehicle Division.

On November 27, 2012, Board Member Blake Ingram conducted a meeting of the Motor Vehicle License Advisory Committee to kick of preliminary matters concerning criminal convictions, fitness of a license holder, the effect of convictions and fitness on applicants and licensees, and initiation of rulemaking concepts.

Occupations Code Chapter 53 authorizes a denial of an application or the suspension and revocation of a license for conviction of an offense that directly relates to the responsibilities of a licensee. Occupations Code Chapter 2301 authorizes the board to deny, revoke or suspend a license if the applicant or license holder is unfit under standards in Chapter 2301 or under board rules.

The committee discussed very complex concepts including the importance in having rules that address criminal conviction and fitness, misdemeanor and felony

offense convictions, the relationship of the offense to the duties of a licensee, standards for determining fitness to hold a license, concerns over equal protection, and a variety of possible approaches that might be utilized.

2.3

The meeting was very successful. The discussion will allow staff to draft rules to regarding convictions and fitness. Staff intends to continue to work with this committee and that larger group of participants in order to find and establish and draft rules that will serve our industry.

May I answer any questions that you might have?

MR. VANDERGRIFF: Do the board members have any questions?

MR. RODRIGUEZ: I understand the discussion that you put forth today and these are just ideas that may be coming in the form of rules, maybe. I'm wondering about what constitutes a conviction. That's the only observation I'll make here. We have trouble with that throughout the system on what is that conviction.

MR. INGRAM: Can you elaborate just a little bit?

MR. RODRIGUEZ: A conviction isn't always final. So long as you've got matters under appeal or you've got other recourse, there may not be a conviction.

MR. INGRAM: So matters of appeal is what you're thinking.

2.3

MR. RODRIGUEZ: And deferred adjudication, some things that are not necessarily convictions because they're probated in lieu of, and so that's the kind of stuff that you get into when you talk about convictions. So that's the only observation I'll make here. I know you're forthcoming with this and I don't know that we're going to get into those kinds of weeds, but that would be my observation.

MR. INGRAM: I appreciate the input.

MS. LINGO: Absolutely. Once upon a time in another lifetime I worked for a couple of DA's offices and I'm very sensitive to the concepts that you're suggesting, and we'll do our best to present rules that conceptualize and account for those concepts, and certainly we will be bringing back to the committee, but certainly to you as a board even before they're published, for input.

MR. RODRIGUEZ: And I know it's coming, we're not getting into that right now. All I'm saying to you is conviction is a term that we use in the criminal justice system. Maybe you want to not use that and go to malfeasance or anything like that, other than tying you to that standard. That's the only observation I'm making. I know this is awful early.

MR. INGRAM: It's helpful. Thank you. 1 2 MS. LINGO: Thank you very much. MS. RYAN: We have room on the committee. 3 MR. RODRIGUEZ: No. 4 MS. LINGO: We have a lot of fun. 5 6 (General laughter.) MR. VANDERGRIFF: Any other further questions 7 8 for Ms. Lingo? 9 (No response.) 10 MR. VANDERGRIFF: Thank you very much. 11 MS. LINGO: Certainly. MR. VANDERGRIFF: We are now to item 5.C and 12 13 that's on the update by Ms. Brewster on the automation projects. 14 15 MS. BREWSTER: Thank you, Mr. Chairman. 16 the record, my name is Whitney Brewster, executive director. 17 As the board is keenly aware, there are a 18 19 number of automation projects underway. In your board binders you will find a complete listing of those projects 20 and the status of those projects, but I would like to ask 21 22 Mr. Jonathon Taylor, our director of the Enterprise Management Office, to come forward and give us a brief 2.3 24 update on some of the recent activities on some of these

25

projects.

MR. TAYLOR: Good morning. My name is Jonathon Taylor. I'm the director of the EPMO here at the Department of Motor Vehicles.

2.3

As the executive director said, you have a fairly detailed document in your binders about all the projects. I'd like to go over just a few of the projects that have had some real change since we sat here last.

All of them have had some progress but some have had more progress than others.

First, on the RTS refactoring we have had quite a bit of work done and quite a bit of progress, but that is an ongoing procurement. We're at a phase of that procurement where I can't really go into a lot of detail about that in this setting.

The next item would be the web title and that's certainly a priority project, the Web/Dealer/e-Title project. The Department of Information Resources quality assurance team, there's some rules that require certain projects to go to them for kind of an idea of a phased gate approval. We are waiting on some of that approval for this project. That project has since completed that approval with the business case. We've moved forward to present the project plan itself to them. That project, the Web/Dealer/e-Title, is still very much on track for the pilot rollout later this year.

A big project for this office, and I don't know if our CIO is here -- there he is -- that should be given a lot of kudos. The Office 365 project that is making our own Outlook rollout throughout this agency. Both headquarters and regional has been completed. There's still some remediation of that, little things here and there, but that was a major undertaking that has been completed.

2.3

Another major project that is moving quickly with some real aggressive and quality project management is NMVTIS. The project manager has been assigned, they're working with all the stakeholders, the AMVA, we're meeting twice a week with them. That project is moving very well, the project charter is under development. The great thing about that project is there's a lot of stakeholder involvement. Communication is going very, very well.

MS. BREWSTER: Mr. Chairman, if I might just interrupt. NMVTIS National Motor Vehicle Title and Information System. It's a federal requirement, and for us to be in compliance with federal law, that is the prime driver for this project.

MR. TAYLOR: We have not been until now.

MR. VANDERGRIFF: I don't see that listed anywhere.

MR. WALKER: It's on page 5.

ON THE RECORD REPORTING (512) 450-0342

MR. TAYLOR: Another one that might be kind of a little bit more internal detail is the separation of what we call active directory. The reason why I'm bringing some of these up is you'll see them again in the next item. That is a kind of general, in the IT world and inside this office, who are you, this is who I am for credentialing throughout many of the things we do. It is a key part of the separation of this agency and the infrastructure improvement of this agency.

2.3

Next is the IRP infrastructure improvement. We have some parts ordered, it's partially done. That, as well as headquarters communications, you will see in paragraph D, what we're going to go over next.

And finally, something everybody will see, and I like to note that we have a project that the rest of the world gets to see, and that's the public-facing website. The full deployment of that is very much on schedule. The vendor is working training the current office personnel inside this office on content management, how to post things, so the public-facing website in its full deployment is on schedule for next month.

And those are the updates I have.

MS. JOHNSON: I have to go back and check just one comment. I was out looking fora form on our website the other day -- and it's still the old website and I

And

realize that, unless it's changed in the last week -- I 1 couldn't find our address anywhere. Can you somewhere include that? 3 MR. TAYLOR: Yes, I can. 4 MS. JOHNSON: The Jackson Avenue address, that 5 6 we have a permanent address. 7 MR. TAYLOR: I am sure we can do that. 8 Actually, when I first came to work here, I was looking 9 for the actual address to tell people, and I had the same 10 problem. MR. WALKER: Jonathon, I know that at one 11 time -- I've come to so many meetings, I can't keep them 12 13 all straight -- at one of the meetings, and I don't think you were probably at this meeting, we had asked that we 14 15 get a flow sheet chart of where we stand on these projects 16 with respect to how much we have budgeted to them, how 17 much has been spent and how much we still have left and how much work is still out there to be done so that the 18 19 board has an idea of where we're at with respect to the budget. 20 MR. VANDERGRIFF: Did you also ask for a 21 22 timeline so we could kind of understand? MR. WALKER: Yes. 2.3

ON THE RECORD REPORTING (512) 450-0342

MR. WALKER: And we asked for a timeline.

MR. VANDERGRIFF: Thought so.

24

25

I'm not saying that I asked you this, and I don't know who 1 it was, but I do know that either at one of our committee 3 meetings or at one of our board meetings that we asked for that to be done. 4 I know Linda has provided us some of that in 5 6 her financial reports, and I read those, with respect to 7 the automation project and so forth, but there's a lot of 8 projects here that you went through that you said you're in different phases of and I think the board really wants 9 10 to know where do we stand financially still with respect to that. 11 12 MR. VANDERGRIFF: And the timing. 13 MR. WALKER: And the timing on these. So with respect to that, would you please make sure that when you 14 15

present this next time.

16

17

18

19

20

21

22

2.3

24

25

MS. BREWSTER: Mr. Walker, we have that information available and we can certainly include that in the binders for the next meeting so you have that at your fingertips.

MR. WALKER: And I think we have asked for that in the past, have we not?

MS. RYAN: And I've seen it before.

MR. TAYLOR: It's just not included in the binder.

> Are you going to discuss the MS. JOHNSON:

> > ON THE RECORD REPORTING (512) 450-0342

concept projects, or not?

2.3

MR. TAYLOR: Well, I'm happy to, but there have been no changes in the concept projects in the last month.

MS. JOHNSON: This is the first I saw some of these. On page 7, the EDMS separation where you're talking about determining the option for redoing the scanning of documentation to the TACs or points of sale, be sure to include the cost of scanners there because not everybody has scanners, and it's amazing to me how many ta offices we have out there that have three to five people and they have absolutely no technology, and so we need to be really sensitive to that.

And let me see, and I support consistent service delivery on page 9. I do believe that our legislative agenda might impact that, although I read the current law to say that the TACs shall receive -- my county takes my money, and so if we're going to have standards for tax offices, in order to have standards and to be fair, that money needs to come directly to them so our county commissioners aren't creating the adverse impact on our delivery of services. I'm only allowed to hire who they let me hire, and if I don't have independent money or discretionary funds or funds of my office that are dedicated to this purpose, then they decide not to give me staff, I'm down two since Hurricane Ike and it

1	does affect service delivery, but we cannot have standards
2	without guaranteeing some type of revenue to support that.
3	MR. VANDERGRIFF: Thank you, Ms. Johnson. Do
4	you have any other comments or suggestions?
5	MS. JOHNSON: No. I don't think I should go
6	into the one on 13 yet. You know my opinion on that.
7	MR. PALACIOS: I do have a question. We've
8	asked for more details. Can you give me an update on the
9	e-Titles, when you suspect that will be rolling out?
10	MR. TAYLOR: Web/Dealer/e-Title, we will have a
11	pilot release this year, yes, sir.
12	MR. PALACIOS: This year?
13	MS. BREWSTER: September 1, 2013.
14	MR. TAYLOR: By this end of fiscal year.
15	MR. WALKER: Isn't that part of the refactoring
16	project?
17	MR. TAYLOR: Say again.
18	MR. WALKER: Isn't that part of the refactoring
19	project?
20	MR. TAYLOR: One will affect the other, but we
21	can roll out the pilot. In other words, the end product
22	of both of these affect each other, but in the phases we
23	can do them separately.
24	MR. WALKER: So even without the automation
25	project going on, we can get the e-Titles.

MR. TAYLOR: We can get the pilot project for the e-Title up and running by the end of this year; we won't have the full deployment of it and everything we want it to do until RTS is complete, as well. Many of the projects are that way.

MR. WALKER: That's why it's critical that we get this RTS going.

MR. TAYLOR: Absolutely.

2.3

Those are the updates that I've had since the last meeting, and of course, I'm available for any other questions. If anybody has questions specifically about the RTS, as I said, in this session we can't go over much of that.

MR. VANDERGRIFF: Questions? Thank you.

MR. TAYLOR: Thank you.

MR. VANDERGRIFF: With that, Ms. Brewster, we're still with you on 5.D.

MS. BREWSTER: Thank you. The agency has several infrastructure projects planned to facilitate establishing independent technology and telecommunications networks. Mr. Taylor touched on a couple of those. You will find a listing of these projects and their amounts in your handout, the first being WAN/LAN separation. This project will replace TxDOT's wide area network and local area network components with TxDMV controlled network

components. All core network components have switches, routers, firewalls, instruction, detection, et cetera will be replaced with new equipment. This is an estimated not-to-exceed budget of \$1,219,454.

2.3

The next is headquarters communications infrastructure, this is our VoIP. This project will be implemented in phases. The estimated not-to-exceed budget is \$651,132.

The next item is directory migration. This is implementation of active directory controls, and again,

Mr. Taylor touched on this in his presentation. The amount of that is external cost of not-to-exceed \$465,450.

The next item is infrastructure separation and consolidation. This project will address the identification, modernization and segregation of network assets, these are our servers. TxDOT has initially identified 616 servers that host TxDMV data applications and network traffic. The estimated not-to-exceed budget is \$512,800.

The next item is infrastructure separation and consolidation. As you are aware, we are working to consolidate our Austin based staff into Camp Hubbard and Bull Creek, and relocating staff currently housed at Riverside. In an effort to complete that consolidation, we are requesting a not-to-exceed estimated budget of

\$713,570.

2.3

And finally, the TxIRP infrastructure replacement, this is to replace the server. This project will replace the equipment used to run the TxIRP system. We have a waiver and we're exempt from the State Data Center on this. We are responsible for the hardware maintenance and replacement. The estimated not-to-exceed budget on that is \$427,025.

An estimated not-to-exceed budget has been identified for each of these infrastructure projects. In the interest of efficiency, we're asking the board to approve the not-to-exceed budget estimates and allow staff to place hardware and software orders against the budget limits. Staff will provide regular updates on these projects at subsequent board meetings.

And with that, Mr. Chairman, I am happy to try to answer any questions. We also have Gary Gordier, our CIO, in the audience to answer any technical questions.

MR. VANDERGRIFF: I have two questions. One of them is pretty short. Again, where does the money come, out of what budget item for this?

MS. BREWSTER: Mr. Chairman, with the exception of the infrastructure separation and consolidation, that's the staff relocation, they will be coming out of automation funds, the automation project funds.

MR. VANDERGRIFF: And our current fiscal year 1 funds? 2 3 MS. BREWSTER: Correct. MR. VANDERGRIFF: Okay. And then the second 4 question, can you tell us in kind of a general statement, 5 6 plain English, what is this going to do in terms of the efficiency and effective operations here? In making us 7 8 more efficient and more effective, what does this help us do? 9 10 MS. BREWSTER: In a nutshell, Mr. Chairman, this makes us not so dependent on TxDOT to make any 11 changes in our day-to-day operations. We will be able to 12 13 take over those functions on our own. When we need to make changes in terms of our servers, we'll be able to do 14 15 that effectively ourselves. Another example of that, you 16 heard Mr. Taylor talk about our website, right now we are 17 very dependent upon TxDOT to make changes to our website. These types of efforts will allow us to be able to take 18 19 control and stand up our agency. 20 MR. VANDERGRIFF: And will it lead to greater efficient and effective services as a result of that? 21 MS. BREWSTER: Absolutely. You will see 22 quicker, more flexibility in our operations. 2.3 24 MR. VANDERGRIFF: So our customers, whether

they're industry-related or down the line consumers,

25

they're going to see a benefit. 1 MS. BREWSTER: Absolutely, internally and 2 3 externally. MR. VANDERGRIFF: Okay. 4 MR. RODRIGUEZ: I have one question, Mr. 5 6 Chairman. 7 MR. VANDERGRIFF: Please. 8 MR. RODRIGUEZ: For the director, there are purchasing requirements and DIR requirements, we've met 9 10 all those. Right? MS. BREWSTER: Yes, sir. 11 MR. RODRIGUEZ: So moved, Mr. Chairman. 12 13 MR. WALKER: I'd like to make a motion. MR. VANDERGRIFF: We actually have a motion. 14 15 MR. WALKER: What is the motion? 16 MR. VANDERGRIFF: The motion is to approve these items which total about \$4.2 million. Are you 17 seconding that motion or are you going to do something 18 different? 19 MR. WALKER: I think what the motion needs to 20 be is that we allow the executive director or the staff --21 22 actually, it needs to be the executive director to issue the purchase orders or to have the ability to issue and 2.3 purchase this stuff as needed at the not-to-exceed limits 24 25 of the proposed amounts that have been presented to us

today. And this will be over a period of time, it's not 1 that this is all going to take place next week or next 3 month, it's a progression of steps that we need to take, and what we're allowing today is for her to have the 4 ability, without coming back to the board, to make those 5 6 purchases. 7 MR. VANDERGRIFF: That's correct. They do 8 exceed, individually some of them don't but collectively they certainly do, and I think it's wise, and I applaud 9 10 the executive director for coming forward on all of them, bringing them to us. So I understand the language. 11 Rodriguez, is that the motion you would be making? 12

MR. RODRIGUEZ: Merry Christmas, Mr. Walker. Yes, sir, I'll agree with that.

MR. VANDERGRIFF: Okay. So never say he didn't give you one.

(General laughter.)

13

14

15

16

17

18

19

20

21

22

2.3

24

25

MR. WALKER: I will second his motion.

MR. VANDERGRIFF: We have a motion and a second from Mr. Walker on this motion. Any further discussion?

One thing that I would ask is that you do come back to us with a timeline on this and how this is progressing as it moves forward.

MR. INGRAM: I just have one question. For the benefit of someone watching this for the first time, how

All

were these costs figured? How did we come up with these 1 costs? 3 MS. BREWSTER: The majority of these costs, Member Ingram, are hardware costs, so they are very easily 4 identifiable. The majority of these costs we have scoped 5 6 and we have received quotes on and we feel very strongly 7 that these are accurate numbers. If there are any changes 8 to the amounts specified or we somehow go over the do-notexceed amounts, we will certainly come before this board 9 and ask for authority to move forward with those 10 purchases, but I do not foresee that as being an issue. 11 12 MR. WALKER: I can answer part of your 13 question, Mr. Ingram. The \$1.2 million that we have down for the external equipment there, we have worked very 14 15 hard, staff has worked very hard to get that. We have a 16 price in house right now of around \$877,000 for that \$1.2 17 million, so we're coming in under budget on most of the items on here. 18 19 MS. RYAN: On hardware. MR. WALKER: Yes. But we've got that down 20 right now through negotiations. 21 MR. VANDERGRIFF: Any further questions? 22 2.3 (No response.)

ON THE RECORD REPORTING (512) 450-0342

those in favor please raise your right hand in support.

MR. VANDERGRIFF: A motion and a second.

24

25

(A show of hands.) 1 MR. VANDERGRIFF: All opposed. 2 3 (No response.) MR. VANDERGRIFF: The motion carries 4 unanimously. Thank you. 5 6 The next item on the agenda is the approval of a specialty plate design. Mr. Elliston. 7 MR. ELLISTON: Mr. Chairman, members. 8 For the record, my name is Randy Elliston. I'm the director of 9 10 the Vehicle Titles and Registration Division. The state specialty plate vendor, My Plates, is 11 requesting approval of a graphic redesign of its currently 12 13 approved Houston Rockets specialty plate. An image of this plate should be in your briefing book. This is not a 14 15 request to add a new plate to our inventory, it's merely a 16 graphic redesign of their current license plate that they have. And when they do this, the old version will no 17 longer be available for sale, so we're not adding anything 18 19 to our inventory. The plate redesign, as presented, meets all 20 agency and legislative requirements. The agency requests 21 22 your consideration for approval of this redesign. MR. WALKER: I so move that we accept the 2.3 24 recommendation of staff to accept the Rockets license

plate from the My Plates vendor.

25

MR. VANDERGRIFF: We have a motion. Do we have 1 a second? 2 3 MR. INGRAM: Second. MR. VANDERGRIFF: Second from Mr. Ingram. 4 we have any discussion, questions? 5 6 MS. JOHNSON: I have a question. Since this is a redesign and not a new plate, I will probably support 7 8 this motion, but I just want the certainty that this does meet our recent standards that were discussed, and I'm not 9 10 sure if we adopted them, but the standards. MR. ELLISTON: Yes, ma'am, absolutely it does. 11 It fully meets all of our requirements and standards that 12 13 have been established. MS. JOHNSON: Okay. Thank you. 14 15 MR. RODRIGUEZ: Question. 16 MR. VANDERGRIFF: Mr. Rodriguez. 17 MR. RODRIGUEZ: What is the redesign and why is it necessary. 18 19 MR. ELLISTON: The redesign is if we have a current plate -- and I'm going to show you this one 20 here -- this is the current Rockets plate that is 21 available for purchase today, and the new request is on 22 the board, so it's basically just a graphic redesign. 2.3 24 They just want to change the way it looks, for whatever 25 reason, either through the organization wants it changed

or for marketing purposes they feel it will make a 1 difference, so they just changed the graphic on how it's 3 laid out on the plate. MR. VANDERGRIFF: It does seem, as a byproduct 4 of that, that it's an easier plate to read from the 5 6 legibility perspective. Do you concur with that? 7 MR. ELLISTON: I agree. This plate also meets 8 our standards, so this is basically their request to make the redesign. 9 10 MR. WALKER: Two questions. Randy, does the old plate just totally go away? 11 12 MR. ELLISTON: Well, you'll still see it on the 13 highway until the end of the seven-year replacement, if someone sells the car or whatever, but we will not make 14 15 this plate anymore for sale, it will not be available if 16 you approve the new design. 17 MR. WALKER: Does the agency charge the \$4,800 setup fee with a redesign? 18 MR. ELLISTON: Actually, because it's just a 19 redesign, I think it's a \$895 fee that My Plates pays for 20 the redesign, so we are compensated. Yes, sir. 21 MR. VANDERGRIFF: Any further questions? 22 2.3 (No response.) 24 MR. VANDERGRIFF: I do want the record to reflect that Ms. Johnson left the room. She's not feeling 25

well so I think she left the room; hopefully she will be back.

2.3

But with that, we submit this to the board.

All those in favor of the motion please raise your right hand in support.

(A show of hands: Ingram, Palacios, Ryan, Vandergriff and Walker.)

MR. VANDERGRIFF: All those opposed.

(A show of hands: Rodriguez.)

MR. VANDERGRIFF: So the motion carries five to one, with Board Member Rodriguez voting against it and Board Member Johnson, who is temporarily absent from the room, did not vote.

With that, we are on to item number 6 on the agenda, the monthly financial report.

MS. FLORES: For the record, my name is Linda Flores. I'm the chief financial officer for the agency.

To bring up your request regarding the automation project, in the financial summary for the month, if I could turn your attention to page 12. What is going to be before you at the next monthly board meeting is a breakout of the first two line items in that capital expenditure detail. What we're doing is reformatting those two line items to match up to the detail that the director of the project management office will be

providing to you. So you will see TxDMV automation with a further detail breakout by budget, by project. So you will see that at the next monthly board meeting.

There's not a whole lot here for your consideration, our monthly expenditures, revenue. Our expenditures are still low because this is only two months into the year. Our revenues are coming in higher than we anticipated for Fund 6 as well as Fund 1.

MR. WALKER: Wait a minute. Can I ask a question as you go along?

MS. FLORES: Yes, sir.

2.3

MR. WALKER: If you go back to your second chart there, I have a little bit of a question. On your first chart there where it says July, we had the least amount of registered vehicles but we had the highest amount of revenue. How does that reflect that way?

MS. JOHNSON: Depends on what vehicles, Mr. Walker, depends on the age of the vehicles with the license fees. It would depend on what cars were being registered during that period. It could have been trucks which would have been higher fees. Is that not so?

MR. ENDLICH: For the record, Michael Endlich, revenue estimating for the agency.

What you're looking at here for vehicles is a snapshot in time. We don't measure how many new vehicles

are registered each month, we just take a snapshot in time 1 of number of registered vehicles, so you'll see each month 3 we're seeing more and more registered vehicles in the State of Texas. 4 MR. WALKER: The first column in July, we had 5 6 22,075,000 vehicles registered in the state on that date. 7 MR. ENDLICH: Correct, yes, sir. 8 MR. WALKER: And the following month we had 22,150,000, and I assume any vehicles that expired, we 9 10 drop off of there. MR. ENDLICH: Correct. 11 MR. WALKER: So that's just the cumulative 12 13 number on the bottom. MR. ENDLICH: Absolutely. It's a snapshot in 14 15 time. 16 MR. WALKER: My question was the cumulative number of vehicles at 22 million vehicles under July, the 17 revenue was highest in that month than it was when we had 18 19 22,150,000. 20 MR. VANDERGRIFF: If I understand you correctly, that last line really doesn't tie to the chart. 21 MR. ENDLICH: It does not. It's misleading, 22 unfortunately. I apologize. What that is is a snapshot 23 24 in time. It's not 22 million vehicles are registered in

the month of July, it's total registered vehicles.

25

MR. WALKER: I understand accumulation.

MR. VANDERGRIFF: For purposes of this chart, that's a throwaway number in the sense that it doesn't tie to the chart. If we had this as a proportional registration number, it would obviously be higher numbers in July than the other months. It's them giving the annual number instead of the monthly number.

MR. WALKER: There's no tie-in between the two.

MS. FLORES: No.

MR. WALKER: So why do we have it on the chart?

MS. FLORES: It's just informational purposes.

MR. VANDERGRIFF: I think I would put an asterisk to explain that or change the chart.

MR. ENDLICH: You'll notice the next chart is the same information as far as revenue goes.

MS. FLORES: I think the one item that I did want to point out as far as this month's report is we have made an adjustment to the My Plates revenue, and as I mentioned at last month's board meeting, we made an adjustment for a couple of reasons, primarily because we have better data that we're compiling. As you know, this contract started in 2009 so there was a ramp-up of activity, we saw that activity, we based our initial projections on that ramp-up and now we're having to take down that revenue estimate based on what's actually

occurring and using those actual data points for our projection moving forward. We look at this revenue on a weekly basis, daily basis at times, and specifically when the vendor has a special event scheduled -- and they have those in March and November, they're called Seven for Seven events -- so when we look at those actual data points, we will adjust our revenue estimate accordingly.

2.3

Last month you saw a revenue estimate of \$31 million. We've taken that back down to \$28 million at the end of the contract term. We still expect the vendor to meet its obligation to the State of Texas, however, it's not going to happen in March of 2014, now we're looking into June 2014. So we've slid the actual meeting that obligation a couple of months out. So I did want to bring that to the board's attention.

MS. RYAN: What caused the slide, the change?

MS. FLORES: Just the change in the revenue

projections moving forward. We are seeing a lower growth in one-year plates, so that in turn kind of affects the out months.

MR. INGRAM: Because they're opting for long-term plates?

MS. FLORES: Yes, sir. About 50 percent are made up of one-year plates and then the balance is the five and ten years, and we've already received that

revenue, so we won't be seeing a whole lot of growth in 1 those five- to ten-year plates. 3 MS. BREWSTER: Just to emphasize that we are still projecting that they will meet the \$25 million 4 obligation. 5 6 MS. FLORES: And that concludes the financial report. 7 MR. VANDERGRIFF: Any other questions? 8 9 MR. WALKER: Yes. 10 MR. VANDERGRIFF: Can't get away that quick. MR. WALKER: I have a question about on page --11 it says page 4 but I guess I'm over here on monthly 12 13 expenditures under fund year 2013 under utilities. September we're projecting only \$5,000 but every other 14 15 month it's \$270,000. Why low utilities in that month? 16 MS. FLORES: Well, our bills are usually one 17 month behind so we'll see that ramp-up again. Utilities is primarily composed of charges from the data center for 18 19 the phones, so we'll see that jump up the next month. 20 We're always a month behind on bills. MR. WALKER: So why wouldn't we go ahead and 21 22 accrue that. Aren't we on an accrual method of accounting? 2.3 24 MS. FLORES: No, sir. We are state government, we're cash basis. And it's only at the end of the year do 25

1	I accrue that utilities payment in the financial
2	statement.
3	MR. PALACIOS: Is that the same for
4	professional fees and services?
5	MS. FLORES: Yes, sir. We have bills in-house.
6	MR. WALKER: I think that was my other
7	question.
8	MR. VANDERGRIFF: Any other questions from the
9	board?
10	(No response.)
11	MR. VANDERGRIFF: Thank you very much.
12	Moving on to 6.B, Executive Director.
13	MS. BREWSTER: Thank you, Mr. Chairman.
14	Just a quick update on the interagency
15	agreement with TxDOT. I did receive confirmation from
16	Executive Director Phil Wilson that he will indeed sign
17	the agreement, possibly as early as today, but I will
18	continue to brief the board until that contract is
19	executed and I have it in my hands.
20	MR. WALKER: The MOU?
21	MS. BREWSTER: Yes, sir.
22	Any questions on that item?
23	(No response.)
24	MS. BREWSTER: During the 82nd Legislative
25	Session, Senate Bill 197 passed and this required the

ON THE RECORD REPORTING (512) 450-0342

Department of Public Safety and the TxDMV to conduct a study regarding the feasibility and best practices for using an electronic system to consolidate the inspection and registration of motor vehicles in Texas. The board received a briefing on that at the last meeting. I just wanted to make the board aware that there was a change to that report. DPS and TxDMV were able to agree on a recommendation. I consulted with the chairman on this recommendation before the report was finalized.

2.3

The Department of Public Safety and TxDMV recommend in the report moving to a single certificate system, with the registration ticker provided by TxDMV, which would eliminate motor vehicle inspection certificate fraud while reducing costs to the state. I might also add that the report was submitted before the December 1, 2012 deadline, so now the legislature can use that report however it so chooses in making any change to the program.

Mr. Chairman, that concludes my reports.

MR. PALACIOS: I have a question. On the inspection certificates now, so is it my understanding DMV will be responsible for the implementation of the inspection process, or is that something we're going to share with DPS, and how is that going to work?

MS. BREWSTER: Member Palacios, DPS would still be responsible for the inspection process. We would

simply be consolidating the sticker and we would be responsible for the issuance of a single sticker that verifies that the inspection was completed as well as they've met all of the requirements for registration. So the process will still continue, they just won't be issued a separate sticker, they will come to the Department of Motor Vehicles to be issued that single sticker.

MR. VANDERGRIFF: How will that coordinate between the two different agencies to arrive at the time to issue that one sticker?

MS. BREWSTER: Mr. Chairman, if you wouldn't mind, could Jeremiah come forward and talk to the specifics of how that would work?

MR. VANDERGRIFF: Yes.

2.3

MR. KUNTZ: Jeremiah Kuntz, director of Government and Strategic Communications.

The way the report laid it out, DPS would still be responsible for doing inspections. The customer would basically go get their vehicle inspected, and then within 90 days go and have it registered. They would bring in a receipt from the inspection and that would be required in order to register the vehicle. Additionally, we talked about technology, actually downloading similar to the way that we verify insurance. Basically we would ping their system and it would give a flag of either their system

shows that it's been inspected or has not been inspected, and that would then give clearance for the county tax assessor-collector to proceed with the registration. So it would basically lock them out if they have not inspected the vehicle.

2.3

MR. PALACIOS: When do we anticipate that this will take effect?

MR. KUNTZ: The issue with the report is this was merely a recommendation to the legislature. There would still be required a bill and legislation to pass, and so at this point no bills have been filed to this effect, it's merely just a report to the legislature that was required from the last session. So at this point there's no action, no change to the current system.

MR. VANDERGRIFF: We talked about this but we didn't act on it.

Any other questions?

(No response.)

MR. KUNTZ: Thank you.

MR. VANDERGRIFF: Thank you very much.

With that, I believe we have come to the conclusion of the public portion of our agenda. It is 10:34 in the morning. We're going to take a ten-minute break and then we'll be going into closed session under the following section of the Texas Government Code:

Section 551.071 to obtain legal advice from our legal counsel regarding agenda items 5.C and 5.D, and also under Section 551.074 to discuss personnel matters in relation to the executive director. And I would anticipate -- actually, no anticipation on the executive session in terms of the time, and we will certainly reconvene in open session after that, but I do not anticipate any action items to be taken up when we reconvene in public session, I think we will only be adjourning at that point in time.

2.3

So with that, we will recess from the public meeting and reconvene in ten minutes behind me here in the conference room.

(Whereupon, at 10:34 a.m., the meeting was recessed, to reconvene this same day, Thursday, December 13, 2012, following conclusion of the executive session.)

MR. VANDERGRIFF: It is 11:46 a.m. on December 13,2012, and the board of the Texas Department of Motor Vehicles is now in open session. I want to note that no action was taken in closed session.

I do want to note that Board Member Johnson left the executive session at approximately 10:26 a.m. and did not return, and that Board Member Rodriguez finished the executive session but has departed the meeting and is not with us at this point.

So with that, I'd be pleased to entertain a

1	motion to adjourn.
2	MR. PALACIOS: So moved.
3	MR. WALKER: Second.
4	MR. VANDERGRIFF: We have a motion by Board
5	Member Palacios, we have a second by Board Member Walker.
6	All those in favor please raise your right hand.
7	(A show of hands.)
8	MR. VANDERGRIFF: The motion carries
9	unanimously. We are adjourned.
10	(Whereupon, at 11:46 a.m., the meeting was
11	concluded.)

CERTIFICATE

MEETING OF: TxDMV board

LOCATION: Austin, Texas

DATE: December 13, 2012

I do hereby certify that the foregoing pages, numbers 1 through 74, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

 (Transcriber) 12/31/2012 (Date)

On the Record Reporting 3636 Executive Ctr Dr., G-22 Austin, Texas 78731